XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO.501/2004

APPELLANT (In Jail) — Jai Singh, S/o Prithvi Singh @ Gore Singh, Aged about 26 years, resident of Village Sukli, Police Station Janjgir, District Janjgir Champa (C.G.)

Vs

RESPONDENT — State of Chhattisgarh, Through Police Station Janjgir, District-Janjgir Champa (C.G.)

Present:
Mr. Ashok Swarnkar, Advocate for the appellant.
Mrs. Madhunisha Singh, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(4th October, 2007)

Per Dhirendra Mishra, J:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 26th March, 2004 passed by learned Additional Sessions Judge, Janjgir in Sessions Trial No.441/03 whereby learned Additional Sessions Judge has convicted the appellant under Section 452 of the IPC and sentenced him to undergo R.I. for 7 months & 6 days, the period already undergone by him.

The appellant was prosecuted for the offence punishable under Sections 450 & 376 of the IPC for entering into the house of the prosecutrix on 9.8.2003 at 4.00 a.m., thereafter forcibly taking the prosecutrix and committing rape with her. However, during the

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pendency of trial the prosecutrix died before she could be examined and in these circumstances the trial court did not believe the version of the witnesses regarding the commission of rape considering the same to be hear-say evidence, as the same was based on the information given by the prosecutrix to the witnesses. However, the appellant has been convicted under Section 452 of the IPC on the basis of statement of PW-4 Vikas Singh & PW-5 Sanjay Singh, sons of the prosecutrix.

Learned counsel for the appellant submits that the above witnesses are the child witnesses, aged 12 & 15 years respectively, there are material contradictions and omissions in their statements and the person to whom they disclosed the fact that the appellant entered their house and forcibly took their mother i.e. Ramesh, has not been examined and in these circumstances the trial court ought not to have acted upon the testimony of the child witnesses for holding the appellant guilty of the above offence.

On the other hand, learned counsel for the State has supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the oral and documentary evidence available on record.

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Vikas Singh (PW-4), who is son of the prosecutrix, has stated that on the date of incident he along with his brother Sanjay Singh was sleeping with the prosecutrix in the home. At about 4.00 in the morning he woke up after hearing the shouts of his mother, Sanjay also woke up and both of them saw the appellant taking their mother by lifting her bodily. They stopped him from doing so, however, he threatened them. This was narrated by them to the neighbourers and was further narrated to their father after his return from the outside and after some time their mother returned weeping. Similar is the statement of Sanjay Singh (PW-5), aged about 15 years.

In the cross-examination of above witnesses, the defence has not been able to elicit anything which discredits their statement or make them unreliable. No contradiction or omission has been pointed out in the cross-examination, as these witnesses have not been confronted from their earlier statement. In these circumstances, there is no illegality or infirmity in the impugned judgment whereby the appellant has been convicted for the offence under Section 452 of the IPC.

In the result, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

[पीछे देखें]

Goshain